

Part III. Administrative, Procedural, and Miscellaneous

Electronic Delivery of Form 1099 and Form 5498 Payee Statements

Notice 2004-10

I. Purpose and Scope

This notice provides guidance to sponsors or administrators of retirement plans or qualified tuition programs (QTPs), employers of simplified employee pensions (SEPs), or trustees, custodians, or issuers of traditional Individual Retirement Arrangements (IRAs), Roth IRAs, Coverdell education savings accounts (CESAs), or Archer Medical Savings Accounts (Archer MSAs) regarding the electronic delivery of payee statements to recipients. Specifically, this notice provides that a furnisher of a Form 1099 or a Form 5498 relating to the reporting of contributions and distributions of pensions, SEPs, traditional IRAs, Roth IRAs, QTPs, CESAs, and Archer MSAs may deliver electronically the payee statements required to be furnished to recipients for 2003 and subsequent years.

II. Background

Section 220(h) of the Internal Revenue Code provides that the Secretary may require the trustee of an Archer MSA to make such reports regarding the account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary determines appropriate. The required reports must be filed at the time and in the manner and furnished to the individuals at the time and in the manner prescribed by the Secretary.

Section 408(i) provides that the trustee of an IRA and the issuer of an endowment contract described in § 408(b) or an individual retirement annuity must make such reports regarding the account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions (and the years to which they relate), distributions aggregating \$10 or more in any calendar year, and such other matters as the Secretary may require. These reports must be filed at the

time and in the manner the Secretary prescribes and must be furnished to individuals not later than January 31 of the calendar year following the calendar year to which the reports relate and in the manner prescribed by the Secretary.

Section 408(l) provides that an employer who makes contributions on behalf of employees to a SEP must provide reports with respect to such contributions as the Secretary may require. The required reports must be filed at the time and in the manner and furnished to employees at the time and in the manner prescribed by the Secretary.

Section 529(d) provides that each officer or employee having control of a § 529 QTP must make such reports regarding the program to the Secretary and to designated beneficiaries with respect to contributions, distributions, or such other matters as the Secretary may require. The required reports must be filed at the time and in the manner and furnished to the individuals at the time and in the manner prescribed by the Secretary.

Section 530(h) provides that the trustee of a CESA must make reports regarding the account to the Secretary and to the beneficiary of the account with respect to contributions, distributions, or such other matters as the Secretary may require. The required reports must be filed at the time and in the manner and furnished to the individuals at the time and in the manner prescribed by the Secretary.

Section 6047(d)(1) provides for the Secretary by forms or regulations to require the plan sponsor or administrator from which designated distributions may be made and the issuer of a contract under which designated distributions may be made to make returns and reports regarding the plan or contract to the Secretary and to participants and beneficiaries of the plan or contract and such other persons as the Secretary may by regulations prescribe. Section 6047(d)(2) provides that the reports must be in the form, be made at such time, and contain such information as the Secretary may prescribe by forms or regulations. Under § 3405(e)(1), a designated distribution generally includes any distribution or payment from or under a § 401 qualified plan, a § 403(b) tax-shel-

tered annuity, a § 457 governmental plan, an IRA, and a commercial annuity.

Section 401 of the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21, 40 (2002), provides that any person required to furnish a statement under any section of subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code for any taxable year ending after the date of the enactment of the Act, may electronically furnish such statement (without regard to any first class mailing requirement) to any recipient who has consented to the electronic provision of the statement in a manner similar to the one permitted under the regulations issued under § 6051 of the Internal Revenue Code or in such other manner as provided by the Secretary. In accordance with this provision, part H of the 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G, under the heading "Electronic recipient statements," provides that if a furnisher is required by sections 6041 through 6050T to furnish a written statement of an information return to a recipient, then the furnisher may provide the payee statement electronically instead of on paper if the requirements specified in the instructions are satisfied.

The Secretary also has the authority to permit the electronic furnishing of Forms 1099 and 5498 payee statements relating to pensions, SEPs, traditional IRAs, Roth IRAs, QTPs, CESAs, and Archer MSAs. However, the 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G do not provide that payee statements for reporting contributions and distributions of pensions, traditional IRAs, Roth IRAs, and Archer MSAs may be furnished electronically.

III. Permitted Electronic Delivery of Payee Statements

This notice provides that, until further guidance is published, notwithstanding part H of the 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G, a sponsor or administrator of a retirement plan or a QTP, an employer of a SEP, or a trustee, custodian, or issuer of an IRA, a Roth IRA, a CESA, or an Archer MSA may furnish the required Form 1099 or Form 5498 payee statements electroni-

cally to recipients if the furnisher satisfies the consent, format, posting, and notification requirements described in part H of the 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G and furnishes such payee statements by their respective due dates.

This notice hereby modifies part H of the 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G by permitting the electronic delivery of the Form 1099-R, Form 1099-MSA, Form 1099-Q, Form 5498, Form 5498-ESA, and Form 5498-MSA payee statements by their respective due dates.

IV. Effective Date

This notice is applicable with respect to Form 1099-R, Form 1099-MSA, Form 1099-Q, Form 5498, Form 5498-ESA, and Form 5498-MSA payee statements required to be furnished to recipients for 2003 and subsequent years.

V. Effect on Other Documents

The document entitled 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G is hereby modified.

Drafting Information

The principal author of this notice is Pamela R. Kinard of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in its development. For further information regarding this notice, contact Pamela R. Kinard at (202) 622-6060 (not a toll-free number).

Recordkeeping Agreement Pilot Program Involving Credit for Increasing Research Activities

Notice 2004-11

SECTION 1. PURPOSE

This notice announces a pilot program that will permit the Internal Revenue Service (Service) and large and mid-size business taxpayers to enter into research credit recordkeeping agreements (RCRAs). If

a taxpayer complies with the terms of a RCRA, then the Service will deem the taxpayer to have satisfied the recordkeeping requirements of section 6001 of the Internal Revenue Code (Code) for purposes of the credit for increasing research activities under section 41 (research credit). A RCRA does not relieve the taxpayer of its section 6001 recordkeeping obligations for purposes of any other provision of the Code.

The purposes of the pilot program are to develop and evaluate a procedure:

1. To resolve issues concerning the type and amount of documents that a taxpayer must maintain, retain, and produce to satisfy the recordkeeping requirements of section 6001 for the research credit; and
2. To reduce the costs, burdens, and delays frequently encountered by taxpayers and the Service in examinations involving the research credit.

SECTION 2. DESCRIPTION OF THE PILOT PROGRAM

The Large and Mid-Size Business Operating Division (LMSB) will administer the pilot program. The pilot program is available to LMSB taxpayers who have claimed the research credit on a timely filed original Form 1120, "U.S. Corporation Income Tax Return," series return if the return is currently under examination. LMSB anticipates that it may select five to ten applicants for participation in the pilot program.

LMSB intends to establish a team to work with selected applicants to resolve the type and amount of documents that each of these taxpayers must maintain, retain, and produce with respect to the taxable years covered by the RCRA to satisfy the recordkeeping requirements of section 6001 for the research credit. Pilot program participants may be asked to evaluate the pilot program. The Service will evaluate the program and it may be extended, with modifications, on a permanent basis.

SECTION 3. DESCRIPTION OF A RCRA

The Service and a taxpayer will enter into a RCRA through a letter of understanding signed by the Industry Director. The letter of understanding will specify the type and amount of documents that the taxpayer must maintain, retain, and produce

to be deemed to satisfy the recordkeeping requirements of section 6001 for the research credit.

A RCRA may cover up to three consecutive taxable years ending after the date of the RCRA's issuance. A RCRA will not cover the following businesses or taxpayers:

1. Any trade or business (or major portion of any trade or business) acquired by the taxpayer after the RCRA was issued;
2. Any corporation that joined the taxpayer's controlled group of corporations after the RCRA was issued, see I.R.C. § 41(f)(1)(A); and
3. Any trade or business (whether or not incorporated) that was not under common control with the taxpayer on the date the RCRA was issued, see I.R.C. § 41(f)(1)(B).

SECTION 4. REQUEST TO PARTICIPATE IN THE RCRA PILOT PROGRAM

.01 Content of request.

A taxpayer must submit a written request to participate in the pilot program to the Team Manager assigned to the examination. Taxpayers should submit the request on or before May 10, 2004. The request to participate in the RCRA pilot program must contain the following information:

1. The names, addresses, telephone numbers, and taxpayer identification numbers of all members of the taxpayer's controlled group of corporations and trades or businesses under common control with the taxpayer;
2. The name, title, address, and telephone number of a contact person and a properly executed Form 2848, "Power of Attorney and Declaration of Representative," if the information contact is an authorized representative of the taxpayer;
3. The location of the person responsible for the taxpayer's tax matters;
4. The location of the taxpayer's research credit records;
5. A discussion of the taxpayer's suitability for the pilot program and any unique benefits that may result from a RCRA with the taxpayer;
6. A statement that the taxpayer agrees that interviews and the inspection of the taxpayer's books and records under the RCRA procedures (see Section 6): (1) do

not constitute an examination or an inspection of books of account for purposes of section 7605(b) or any administrative provisions adopted by the Service, and (2) will not preclude or impede a later examination of a return or inspection of records under section 7602 or any administrative provisions adopted by the Service for any taxable year.

7. A statement that the Service need not comply with any applicable procedural restrictions (including providing notice under section 7605(b)) before beginning an examination or inspection under RCRA procedures (*see* Section 6); and

8. A statement that the taxpayer is willing to participate in the pilot program and to evaluate the pilot program.

.02 Signature.

The taxpayer or the taxpayer's authorized representative must sign the request to participate in the RCRA pilot program. The request must include a copy of Form 2848 if the request is signed by an authorized representative.

.03 No user fee.

The Service will not charge a user fee for a RCRA request during the pilot program.

SECTION 5. RECOMMENDATION AND SELECTION PROCESS FOR PARTICIPATION IN THE RCRA PILOT PROGRAM

.01 Team Manager's role.

Team Managers will forward a copy of the taxpayer's written request to participate in the pilot program to:

1. The Industry Director for the LMSB industry group with jurisdiction over the taxpayer;

2. The Director, Pre-filing and Technical Guidance, for LMSB; and

3. The Director, Field Specialists, for LMSB.

.02 Recommendation process.

The Team Manager will recommend whether LMSB should accept the taxpayer to participate in the pilot program. The Team Manager will consider the following factors:

1. The taxpayer's cooperation with the Service in the past;

2. The resources needed for the Service to evaluate the taxpayer's records and recordkeeping systems; and

3. The potential benefits of a RCRA.

.03 Selection process.

The selection of a taxpayer for the pilot program is subject to the approval of the Industry Director and the concurrence of the Director, Pre-filing and Technical Guidance. In addition to the factors set forth in Section 5.02, the following factors will be considered in selecting taxpayers to participate in the pilot program:

1. The potential to provide a cross-section of industries; and

2. The probability of the parties completing a RCRA within a reasonable period of time.

.04 Communication with the taxpayer.

The Industry Director or Director, Field Operations, will contact the taxpayer within 14 days after receipt of the request to discuss the taxpayer's suitability for the pilot program. LMSB will notify the taxpayer in writing whether the taxpayer has been selected to participate in the pilot program. If LMSB does not select the taxpayer, the taxpayer has no right to appeal the decision.

SECTION 6. TERMS OF A RCRA

The LMSB team and the taxpayer will negotiate the terms of the RCRA. The LMSB team and the taxpayer will take into account the taxpayer's current recordkeeping systems, records created during research activities, and records used to track costs associated with research activities. A RCRA may require a taxpayer to create and retain records that it does not currently create and retain. The Service will enter into a RCRA only if it determines that the records to be maintained, retained, and produced under the RCRA satisfy the requirements of section 6001 for the research credit.

SECTION 7. APPROVAL OF A RCRA

The terms of the RCRA negotiated by the LMSB team and the taxpayer are subject to the approval of the Industry Director and the concurrence of the Director, Pre-filing and Technical Guidance, and the Director, Field Specialists. If the Industry Director approves the negotiated RCRA, the Industry Director will sign a letter of understanding evidencing the terms of the RCRA.

SECTION 8. EFFECT OF A RCRA

The taxpayer must maintain, retain, and produce records in accordance with the terms and conditions in the RCRA. The taxpayer's compliance with the RCRA establishes only that the taxpayer has satisfied the recordkeeping requirements of section 6001 for the research credit and does not establish that any amounts will be treated as qualified research expenses for purposes of section 41(b).

With respect to the taxable years covered by the RCRA, a RCRA does not limit the Service's ability to request non-recorded information during examinations through interviews and other information gathering methods. In addition, the Service during examinations may request non-recorded information, through interviews and other information gathering methods, as well as recorded information not identified in the RCRA, to verify the information contained in documents required under the RCRA if the Service has reason to question the information's accuracy or reliability.

A taxpayer may terminate the RCRA at any time. The Industry Director may terminate the RCRA if the Service determines that the taxpayer has not complied with the terms of the RCRA. The taxpayer may not appeal an Industry Director's decision to terminate a RCRA.

SECTION 9. EFFECTIVE DATE

The pilot program is effective on February 9, 2004.

SECTION 10. COMMENTS

The Service invites interested persons to comment on the pilot program. Interested persons should send comments to:

Internal Revenue Service
Attn: Large and Mid-Size Business
Division LM:Q
Mint Building, 3rd Floor, M-3-148
1111 Constitution Avenue, NW
Washington, D.C. 20224

SECTION 11. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork

Reduction Act (44 U.S.C. 3507) under control number 1545-1859.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this notice is in Section 4. This information is required to submit a request to participate in the RCRA Pilot Program. This information will be used to enable the Service to determine whether the applicant is suitable for participation in the RCRA Pilot Program. The collection of information is voluntary to obtain a benefit. The likely respondents are businesses or other for profit institutions.

The estimated total annual reporting burden is 1,170 hours.

The estimated annual burden per respondent varies from 5 hours to 126 hours,

depending on individual circumstances, with an estimated average of 18 hours. The estimated number of respondents is 65.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 12. CONTACT INFORMATION

The principal author of this notice is Michael Hara of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. Mr. Hara may be

contacted at (202) 622-4910 (not a toll-free number).

For information regarding the RCRA Pilot Program, contact Hugh Whitley, Engineer Technical Advisor, of the LMSB Pre-filing and Technical Guidance Office at (972) 308-7115 (not a toll-free number). Taxpayers interested in participating in the pilot program, or with questions about the pilot program, may also contact the Team Manager assigned to the examination of the taxpayer before submitting a request to participate in the pilot program.